Supreme Court, U.S.
FILED
051616 JUN 16 2006
OFFICE OF THE CLERK

No.

In The

Supreme Court Of The United States

JOSEPH J. NOTOPOULOS,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI
(WITH APPENDIX)

KIRK D. TAVTIGIAN, JR.
Counsel of Record
Law Offices of
Kirk D. Tavtigian, LLC
780 Farmington Avenue
Farmington, CT 06032
(860) 676-2043

DAVID F. SHERWOOD
Alter and Sherwood, LLC
701 Hebron Avenue
Glastonbury, CT 06033
(860) 652-4020

Question Presented For Review

Is an appellate court required to review de novo a decision that the First Amendment does not protect an attorney from being sanctioned for publicly criticizing the job performance of an elected judge?

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH J. NOTOPOULOS,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE
Respondent

Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Connecticut

The Petitioner, Joseph J. Notopoulos, prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of Connecticut issued on February 14, 2006.

Opinions of The Courts Below

The decision of the Connecticut Supreme Court is reported at 277 Conn. 218, 890 A. 2d 509 (2006) and is printed in the appendix to this brief at App. 1A. An order denying a Motion for Reconsideration/Motion for Reconsideration En Banc was entered by the Connecticut Supreme Court on March 23, 2006. App. 68A.

The appendix also contains Petitioner's Motion for Reconsideration/Motion for Reconsideration En Banc (69A), the decision of the statewide grievance committee (56A), a memorandum of decision by the trial court (40A),

and the opinion of the Connecticut Appellate Court, 85 Conn. App. 425, 857 A. 2d 424 (2004)(App. 24A).

Jurisdiction

The Connecticut Supreme Court issued its decision on February 14, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. This petition is filed within ninety days of the Connecticut Supreme Court's March 23, 2006 denial of the Motion for Reconsideration/Motion for Reconsideration En Banc. Supreme Court Rule 13.

Statutory Provisions Involved

1) Connecticut Rules of Professional Conduct Rule 8.2 (a), which provides in relevant part that: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . ."

2) Connecticut Rules of Professional Conduct Rule 8.4(4), which provides in relevant part that: "It is professional misconduct for a lawyer to . . . (4) [e]ngage in conduct that is prejudicial to the administration of justice . . . ."

Statement of the Case

Probate judges in Connecticut are publicly elected officials who run for office every four years. This action arose because petitioner criticized a probate judge's administration of petitioner's mother's estate.

Petitioner was appointed conservator of his mother's estate and, after she died, was appointed co-executor of her estate. In a letter, petitioner criticized the

probate judge because petitioner was dissatisfied with the probate judge's administration of his mother's estate.

Petitioner is a non-practicing attorney. The probate judge complained to the Statewide Grievance Committee about petitioner's criticism. The Statewide Grievance Committee convened a hearing. Petitioner was the only witness who testified at the hearing. The probate judge did not attend the hearing.

The Statewide Grievance Committee decided that petitioner had violated various rules of the Connecticut Rules of Professional Conduct, and reprimanded petitioner. On appeal from decisions by lower courts, the Connecticut Supreme Court affirmed the Statewide Grievance Committee's decision that petitioner violated Rules 8.2(a) and 8.4(4) of the Rules of Professional Conduct. The Connecticut Supreme Court affirmed the finding that the First Amendment did not protect petitioner's speech because petitioner had acted with malice.

The Connecticut Supreme Court applied the clearly erroneous standard in reviewing the grievance committee and lower court decisions. The court refused to apply a de novo standard of review because petitioner, acting pro se, did not ask the court to apply a de novo standard. App. 21A, 22A n. 14. Petitioner filed a Motion for Reconsideration/Motion for Reconsideration En Banc asking the court to apply a de novo standard of review. App. 69A. The court denied the motion.

Reason For Granting the Writ

CERTIORARI SHOULD BE GRANTED BECAUSE THE CONNECTICUT SUPREME COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH DECISIONS OF THIS COURT.

Speech that criticizes the job performance of an elected official lies at the heart of the freedom of expression protected by the First Amendment, and at the soul of our democracy. The Connecticut Supreme Court refused to review de novo the decision that the First Amendment did not protect petitioner from being sanctioned for publicly criticizing the job performance of an elected judge. The court's decision conflicts with decisions of this Court requiring appellate courts to review de novo decisions raising First Amendment issues. E.g., Gentile v. State Bar of Nevada, 501 U.S. 1030, 1038 (1991); Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 498-511 (1984); New York Times v. Sullivan, 376 U.S. 254, 284-86 (1964). For this reason, certiorari should be granted.

Respectfully submitted.

Petitioner,
Joseph J. Notopoulos:

By_____

KIRK D. TAVTIGIAN, JR.
Counsel of Record
Law Offices of Kirk D. Tavtigian, LLC
780 Farmington Avenue
Farmington, CT 06032
(860) 676-2043

DAVID F. SHERWOOD
Alter and Sherwood, LLC
701 Hebron Avenue
Glastonbury, Ct 06033
(860) 652-4020

No. _____

In The

Supreme Court Of The United States

JOSEPH J. NOTOPOULOS,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX

JOSEPH J. NOTOPOULOS v. STATEWIDE GRIEVANCE COMMITTEE

Connecticut Supreme Court

Notopoulos v. Statewide Grievance Committee **277 Conn. 218**

(SC 17341)

Sullivan, C. J., and Borden, Norcott, Katz and Zarella, Js.

Argued October 25, 2005- officially released February 14, 2006

Joseph J. Notopoulos, pro se, the appellant (plaintiff).

Christopher L. Slack, assistant bar counsel, for the appellee (defendant).

Opinion

SULLIVAN, C. J.

The plaintiff, Joseph J. Notopoulos, appeals following our grant of certification to appeal from the judgment of the Appellate Court affirming the trial court's judgment in favor of the defendant, the statewide grievance committee (committee).(fn1) The committee had reprimanded the plaintiff after he wrote a letter accusing a Probate Court judge of, inter alia, extorting money. The plaintiff appealed from the reprimand to the trial court, which dismissed the appeal in part and sustained the appeal in part. The plaintiff claims on appeal that the Appellate

Court, in affirming the trial court's judgment, improperly concluded that the committee reasonably could have found by clear and convincing evidence that the plaintiff had violated rules 8.2 (a)(fn2) and 8.4 (4)(fn3) of the Rules of Professional Conduct. He further claims that the committee's actions violated his first and fourteenth amendment rights under the United States constitution. We affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts and procedural history. "The plaintiff, an attorney, filed an application with the Probate Court for the district of West Hartford seeking appointment as the conservator of his mother's estate and person. The court, Berman, J., appointed the plaintiff as conservator of his mother's estate, Denny Fuller as conservator of her person and Carolyn Levine to investigate her care and financial assets. The plaintiff had many disagreements with Judge Berman, including a disagreement regarding the fees of Levine and Fuller and one regarding a do not resuscitate order issued to Fuller. On May 29, 1999, the plaintiff's mother died, and the plaintiff and his brother were appointed coexecutors of her estate. Thereafter, the plaintiff claimed that he did not receive timely notice of the probate decree closing his mother's estate. The plaintiff wrote a letter to Renee Bradley, a member of the court staff, and sent copies of this letter to his brother and his mother's physician.(fn4)

"Bradley forwarded this letter to Judge Berman, who then filed a complaint with the committee, claiming that the plaintiff 'attacked [him] and [his] court in a fashion that violates the spirit and letter of the Rules of Professional Conduct.' The matter was referred to the grievance panel for the Hartford-New Britain judicial district, which found probable cause that the plaintiff violated rules 3.5, 8.2 and

8.4 of the Rules of Professional Conduct. At a hearing conducted by a reviewing committee, the plaintiff testified and presented evidence, but Judge Berman did not attend, and the committee did not present any additional evidence or call any witnesses. On February 22, 2002, the reviewing committee issued a decision reprimanding the plaintiff, finding, by clear and convincing evidence, that he violated rules 3.5 (3), 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. On April 18, 2002, this decision was affirmed by the entire committee.

"On May 6, 2002, the plaintiff appealed from the committee's decision to the Superior Court. In its memorandum of decision dated September 24, 2003, the court sustained the plaintiff's appeal as to rule 3.5 (3), but dismissed his appeal as to rules 8.2 (a) and 8.4 (4)." Notopoulos v. Statewide Grievance Committee, 85 **Conn**. App. 425, 427-29, 857 A.2d 424 (2004). In reaching this decision, the trial court suggested that the proper vehicle for bringing a complaint against a Probate Court judge is General Statutes § 45a-63.(fn5) On appeal to the Appellate Court, the plaintiff claimed that (1) the trial court improperly concluded that the committee, having failed to submit any evidence at the hearing, had met its burden of proving by clear and convincing evidence that he violated rule 8.2 (a) of the Rules of Professional Conduct; id., 429-30; and (2) "rule 8.2 (a) is inapplicable because the plaintiff was not acting in his professional capacity as an attorney when he wrote the letter." Id., 430.(fn6) The Appellate Court determined that, "[w]hile the plaintiff was the only party to present evidence or to testify at the hearing, that does not make his evidence the only evidence in the record . . . . [T]he committee already had in the record evidence in support of its decision, including the grievance complaint with the plaintiff's answer, the plaintiff's letter to Judge Berman, Judge Berman's letter to the committee and

documents from the probate proceedings upon which the plaintiff based the allegations contained in his letter. Furthermore . . . the committee, as the fact finder, was free to weigh the plaintiff's evidence and to determine the credibility of his testimony . . . ."Id. The court further concluded that "there is no indication that rule 8.2 (a), either in its language or commentary, is applicable solely to an attorney acting in his or her professional capacity...." Id., 433. In his dissent, Judge Schaller maintained that once the plaintiff had "offered some reasonable explanations of the conduct that he concluded was similar to extortion, the committee had the burden of persuasion on the issue. Clear and convincing evidence is a high standard indeed . . . ."(fn7) Id., 437. By failing to present any evidence that the plaintiff's accusations were false, he argued, the committee had failed to carry its burden. Id., 439.

On appeal to this court, the plaintiff claims: (1) the committee failed to prove that he had violated rules 8.2 (a) and 8.4 (4) by clear and convincing evidence; and (2) rules 8.2 (a) and 8.4 (4) are unconstitutional as applied to an attorney who is exercising his right to free speech in a personal rather than professional capacity. In support of his claim that the committee failed to satisfy its burden of persuasion, the plaintiff argues that (1) Judge Berman failed to appear person ally before the committee to refute the plaintiff's allegations against him, and (2) the only evidence before the committee that addressed the plaintiff's allegations was Judge Berman's letter to the committee, which failed to refute the allegations.

The committee responds: (1) the record at the grievance proceeding, which included the plaintiff's " 'wholly conclusory' " accusations and Judge Berman's complaint indicating that the actions he took in relation to the plaintiff were within his power, satisfied the burden to

prove by clear and convincing evidence that the plaintiff had acted with knowing or reckless disregard as to the truth or falsity of his statements; and (2) the rules are designed to preserve the government's significant interest in the integrity of the legal system, and an attorney's statement "maligning a judge will carry the same weight with the public regardless of whether the attorney is counsel of record in a case, or personally involved . . . ."That governmental interest, the committee argues, must be balanced against the plaintiff's personal right to free speech. Accordingly, the committee claims that the Appellate Court properly concluded that "there is no indication that rule 8.2 (a), either in its language or commentary, is applicable solely to an attorney acting in his or her professional capacity...." Notopoulos v. Statewide Grievance Committee, supra, 85 **Conn**. App. 433.

We agree with the committee that the trial court properly affirmed the committee's finding, by clear and convincing evidence, that the plaintiff had violated rules 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. We further agree with the committee's argument that the Rules of Professional Conduct apply to attorneys acting in both their personal and professional capacities. Moreover, we conclude that the plaintiff's statements impugning the integrity of Judge Berman do not constitute speech protected by the first amendment of the constitution of the United States. Accordingly, we affirm the judgment of the Appellate Court, upholding the committee's reprimand of the plaintiff.

I

We first address the plaintiff's claim that the committee failed to meet its burden of proving a violation

of rule 8.2 (a). We conclude that the committee's finding that the plaintiff violated the rule was not clearly erroneous.

As a preliminary matter, we set forth the appropriate standards of review. "[I]n reviewing a decision of the statewide grievance committee to issue a reprimand, neither the trial court nor this court takes on the function of a fact finder. Rather, our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct.. . . Additionally, in a grievance proceeding, the standard of proof applicable in determining whether an attorney has violated the [Rules] of Professional [Conduct] is clear and convincing evidence....The burden is on the statewide grievance committee to establish the occurrence of an ethics violation by clear and convincing proof." (Internal quotation marks omitted.) Somers v. Statewide Grievance Committee, 245 **Conn**. 277, 290, 715 A.2d 712 (1998). Clear and convincing proof is a demanding standard "denot[ing] a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution.... [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." (Internal quotation marks omitted.) Id., 290-91. "Although the statewide grievance committee is not an administrative agency...the court's review of its conclusions is similar to the review afforded to an administrative agency decision." (Citation omitted.) Weiss v. Statewide Grievance Committee, 227 **Conn**. 802, 811, 633 A.2d 282 (1993). "Upon appeal, the court shall not substitute its judgment for that of the statewide grievance

committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are... clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . . ." Practice Book § 2-38 (f) (5).

"It is within the province of the trial court, when sitting as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence.. . . Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude.. . . An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom." (Citation omitted; internal quotation marks omitted.) Burton v. Mottolese, 267 Conn. 1, 40, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).

When an attorney, subject to sanctions for violating rule 8.2 (a), has "presented no evidence establishing a factual basis for [his or] her claims"; id., 46; the fact finder reasonably may conclude that the attorney's claims against the court "were either knowingly false or made with reckless disregard as to [their] truth or falsity." (Internal quotation marks omitted.) Id., 51. "[U]nsupported allegations...do not give rise to an objective, reasonable belief that the assertions were true." Id., 49; see also Anthony v. Virginia State Bar, 270 Va. 601, 605, 610, 621 S.E.2d 121 (2005) (attorney's statements accusing various

judges of, inter alia, ex parte communication with opposing counsel and " 'conspiracy' " against client on basis of anonymous " 'Deep Throat' " telephone calls and letter were made with "reckless disregard of [their] truth or falsity").

We begin with a review of the plaintiff's allegations. The plaintiff accused Judge Berman of, inter alia: (1) "extort[ing] from the [plaintiff], without legal authority . . . money for his crony Mrs. Levine on January 25, 1999, resorting to threats to impose upon the [plaintiff] a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine [the plaintiff's] mother and bill the estate";(fn8) and (2) funding "a private Marshall Plan for the support, care and feeding of his crony Denny Fuller, [the plaintiff's mother's] court appointed dependent who conferred her with no benefit whatever . . . but . . . line[d] his pockets with more than $3600 of [the plaintiff's mother's] funds in less than [four] months."(fn9)

The severity of these accusations is comparable to the bias charges leveled against the trial judge in Burton.In Burton, the plaintiff claimed that the judge improperly had sanctioned her for failing to appear at a hearing, and that the court had engaged in, inter alia, gender bias against her. Burton v. Mottolese, supra, 267 Conn. 6-7. In response, the trial court ordered the plaintiff to submit an affidavit "specifying each instance of gender bias that the plaintiff was alleging." Id., 7. After receiving the plaintiff's affidavit (fn10) and conducting a hearing on the charges, the trial court concluded that the plaintiff's allegations were unsubstantiated and that she had engaged in inappropriate conduct toward the court, for which it sanctioned her under rules 8.2 (a) and 8.4 of the Rules of Professional Conduct. Id., 46. This court affirmed the trial court's conclusion that all of the plain-tiff's contentions were unsubstantiated, " 'wholly conclusory and without

factual support' "; id.; and, therefore, determined that the trial court's finding that the plaintiff had made statements about the court that were false or in reckless disregard of the truth was not clearly erroneous. Id., 51.

As in Burton, the plaintiff in the present case presented wholly conclusory accusations without factual support. He claimed that Judge Berman improperly extracted money from the plaintiff without legal authority, but the only evidence he presented of this potentially criminal action was that Judge Berman had demanded that the plaintiff pay fees for court-appointed agents of the Probate Court. His suggestion that Judge Berman's conduct might result in "Medicare fraud" was supported only by Judge Berman's statement that he might dispatch a psychiatrist to the plaintiff's residence to examine the plaintiff's mother, an act that is authorized by law. See General Statutes § 45a-132a.(fn11) The plain-tiff's claims that Judge Berman "prostitut[ed] the integrity of his office," had "venal and avaricious" motives, and acted as a "demonstrated financial predator" on behalf of himself and his "cronies" were similarly conclusory and apparently derivative of the plaintiff's disagreement with a number of Judge Berman's decisions over the course of the probate proceedings. Adverse rulings in court proceedings, and even incorrect rulings, do not in and of themselves amount to evidence of illegal or unethical behavior on the part of a judge. See Burton v. Mottolese, supra, 267 Conn. 49. If the plaintiff was dissatisfied with Judge Berman's conduct or rulings, he had available to him other more appropriate vehicles for complaint. See General Statutes § 45a-63.

In reaching its decision, the committee considered the language of the plaintiff's accusatory letter, the plaintiff's testimony, Judge Berman's complaint, paperwork documenting the relationship between the

parties, and the plaintiff's failure to make his allegations through more appropriate judicial channels. The committee, acting as a fact finder, was best able to consider these factors in weighing the credibility of all the evidence before it. Although, as Judge Schaller remarked in his dissenting opinion, it would have been preferable had the committee called witnesses at trial explaining Judge Berman's actions; Notopoulos v. Statewide Grievance Committee, supra, 85 **Conn**. App. 438-39; we conclude that the committee's finding by clear and convincing evidence that the plaintiff violated rule 8.2 (a) was not clearly erroneous.

II

The plaintiff next claims that, even if the committee properly found by clear and convincing evidence that he had violated rule 8.2 (a), the Appellate Court improperly determined that the rule applied to him in his capacity as a pro se party and not as an attorney representing a client. He further contends that the statements in his letter constituted political criticism of an elected official and are protected by his first and fourteenth amendment rights under the United States constitution. We disagree.

A

We have previously held, and the plaintiff does not dispute, that the Rules of Professional Conduct apply to attorneys whether they are representing clients or acting as pro se litigants unless the language of the rule or its relevant commentary clearly suggests otherwise. See Somers v. Statewide Grievance Committee, supra, 245 **Conn**. 287-88 (rule 3.4 [7] of Rules of Professional Conduct applied to attorney acting in pro se capacity); cf. Pinsky v. Statewide Grievance Committee, 216 **Conn**. 228,

236, 578 A.2d 1075 (1990) (rule 4.2 of Rules of Professional Conduct, which proscribes communication between attorney and represented party, expressly applies only when attorney is representing client). Additionally, it is well established that "[t]he Rules of Professional Conduct bind attorneys to uphold the law and to act in accordance with high standards in both their personal and professional lives." Statewide Grievance Committee v. Egbarin, 61 **Conn**. App. 445, 450, 767 A.2d 732, cert. denied, 255 **Conn**. 949, 769 A.2d 64 (2001); In the Matter of Presnick, 19 **Conn**. App. 340, 345, 563 A.2d 299 ("Whether an attorney represents himself or not, his basic obligation to the court as an attorney remains the same. He is an officer of the court... . Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers . . . of the court.. . . An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system." [Citation omitted.]), cert. denied, 213 **Conn**. 801, 567 A.2d 833 (1989); see also Statewide Grievance Committee v. Shluger, 230 **Conn**. 668, 679, 646 A.2d 781 (1994); Rules of Professional Conduct, preamble. Neither the language of rule 8.2 (a) nor the commentary associated with it clearly suggests that the rule should apply only to attorneys' professional, as opposed to personal or pro se, statements. We therefore conclude that the Appellate Court properly determined that rule 8.2 (a) of the Rules of Professional Conduct applies to attorneys' statements, whether they are representing clients or acting as pro se litigants.

B

The plaintiff claims, however, that the Rules of Professional Conduct cannot be applied to punish the

exercise of free speech when an attorney is acting in a personal capacity.(fn12) He relies on Polk v. State Bar of Texas, 374 F. Sup. 784 (D. Tex. 1974), which held that the Texas State Bar Association could not reprimand attorneys for making constitutionally protected statements in their personal capacity about public officials unless such comments threaten a significant state interest. In Polk, the grievance committee reprimanded the plaintiff for professional misconduct after he made derogatory statements at a press conference about Texas public officials. Id., 786.(fn13) The court in Polk reasoned that "[w]here the protections of the [c]onstitution conflict with the efficiency of a system to ensure professional conduct, it is the [c]onstitution that must prevail and the system that must be modified to conform." Id., 788.

The Polk decision does not, however, contemplate attorney speech made with either knowing falsity or reckless disregard as to its truth or falsity. It is well established that statements critical of public officials that are made "with knowledge of their falsity or in reckless disregard of whether they are true or false" are not protected by the first amendment of the United States constitution. Garrison v. Louisiana, 379 U.S. 64, 78, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964); see, e.g., State v. Russell, 227 Kan. 897, 902-904, 610 P.2d 1122 (1980) (when attorney campaigning for office placed political advertisement alleging that district attorney failed to prosecute certain embezzlement cases, which attorney knew or should have known to be false, court rejected suggestion that first amendment precluded discipline for speech); State ex rel. Nebraska State Bar Assn. v. Michaelis, 210 Neb. 545, 560, 316 N.W.2d 46 (1982) (when candidate for county attorney placed advertisement alleging misconduct and illegal acts by county attorney and city attorney, which he "knew or should have known with

ordinary care" to be false, court concluded that discipline may be imposed over first amendment claim); cf. State ex rel. Oklahoma Bar Assn. v. Porter, 766 P.2d 958, 969 (Okla. 1988) (attorney had first amendment right to criticize judge for racism in conduct of trial, where "[f]alse speech" was not involved and attorney had "rational basis" for concluding his remarks were factual); see generally In the Matter of Holtzman, 78 N.Y.2d 184, 191-92, 577 N.E.2d 30, 573 N.Y.S.2d 39 (1991) (attorney disciplined for releasing information to media before obtaining trial transcript to verify truth or falsity of allegations about judge's conduct).(fn14) As we concluded previously in this opinion, the record in this case contains sufficient evidence of the plaintiff's knowing or reckless disregard as to the truth or falsity of his statements. As a result, we conclude that the plaintiff's statements are not protected by the first amendment. Thus, even if it is assumed that the plaintiff was acting in his personal capacity, rule 8.2 (a) is constitutional as applied to his conduct.

III

We next consider the plaintiff's claim that the committee improperly found that he had violated rule 8.4 (4) of the Rules of Professional Conduct, which prohibits an attorney from engaging in "conduct that is prejudicial to the administration of justice . . . ." It is well established that "members of the bar [must] conduct themselves in a manner compatible with the role of courts in the administration of justice." *In re Snyder*, 472 U.S. 634, 644-45, 105 S. Ct. 2874, 86 L. Ed. 2d 504 (1985).(fn15) Several courts have held that when an attorney makes statements that violate rule 8.2 (a) and compromise the integrity of the judiciary, such conduct also constitutes a violation of rule 8.4 (4). See *In the Matter* of McClellan, 754 N.E.2d 500, 502 (Ind. 2001) (attorney who violated rule 8.2 [a] by filing

petition for rehearing stating that ramifications of court's decision read like bad joke also violated rule 8.4 [d](fn16) because petition "demeaned the judiciary and the legal profession"); In the Matter of Garringer, 626 N.E.2d 809, 813 (Ind.) ("[u]nwarranted public suggestion by an attorney that a judicial officer is motivated by criminal purposes and considerations does nothing but weaken and erode the public's confidence in the impartial adjudicatory process" [internal quotation marks omitted]), cert. denied, 513 U.S. 826, 115 S. Ct. 93, 130 L. Ed. 2d 44 (1994); In the Matter of Westfall, 808 S.W.2d 829, 839 (Mo. 1991) (rule 8.2 [a] violation encompassed rule 8.4 violation when attorney made public comments alleging purposefully dishonest conduct by Court of Appeals judge); Office of Disciplinary Counsel v. Price, 557 Pa. 166, 177-78, 732 A.2d 599 (1999) (rule 8.2 violations also justified rule 8.4 discipline where attorney, inter alia, made false allegations about judges); cf. Owen v. Carr, 113 Ill. 2d 273, 281, 497 N.E.2d 1145 (1986) (attorney's letters and memoranda to Judicial Inquiry Board accusing judge of misconduct were protected speech, because it is " 'right and duty' " of attorneys to submit grievances to proper authorities); In the Matter of Becker, 620 N.E.2d 691, 694 (Ind. 1993) ("when an attorney is confronted with what appears to be judicial misconduct, the appropriate avenue is the judicial disciplinary process").

We agree with the reasoning of these cases that false statements or statements made in reckless disregard of the truth that disparage a judge erode the public confidence in the judiciary and thereby undermine the administration of justice. Given our conclusion that there was clear and convincing evidence to support the committee's finding that the plaintiff's statements were made in violation of rule 8.2 (a), we likewise conclude that such evidence supports the committee's finding that the plaintiff's statements were

made in violation of rule 8.4 (4). In addition, as we have indicated in part II of this opinion, the Rules of Professional Conduct apply to attorneys acting in their individual capacity unless the rule clearly indicates otherwise. Nothing in rule 8.4 (4) indicates that it was not intended to apply to attorneys acting in their individual capacity. Accordingly, even if we assume that the plaintiff was acting in his individual capacity, rule 8.4 (4) applies.

Finally, we have concluded that the plaintiff's statements were not speech protected by the first amendment. Thus, we need not determine whether an attorney's disparaging comments about a judge that do not constitute a violation of rule 8.2 (a) constitutionally may be sanctioned under rule 8.4 (4).(fn17) Accordingly, we conclude that the committee's finding that the plaintiff also violated rule 8.4 (4) was not clearly erroneous.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

Footnotes:

1 We granted certification limited to the following issue: "Did the Appellate Court properly affirm the judgment of the trial court dismissing the plaintiff's appeal from his reprimand by the defendant, the statewide grievance committee?" Notopoulos v. Statewide Grievance Committee, 272 Conn. 917, 866 A.2d 1287 (2005).

2 Rule 8.2 (a) of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not make a statement that the lawyer knows to be false or with

reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...."

3 Rule 8.4 of the Rules of Professional Conduct provides in relevant part: "It is professional misconduct for a lawyer to...

"(4) [e]ngage in conduct that is prejudicial to the administration of justice...."

4 The letter states in relevant part: "Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court, I found it prudent to completely distribute the assets of this estate at the earliest practicable moment .... Consequently, the assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine, where those assets shall forever so remain....

"It is hardly surprising that [Judge] Berman is now some [five and onehalf] months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office that this family has been compelled to abide.

"Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the [plaintiff], without legal authority, of money for his crony Mrs. Levine on January 25, 1999 resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through

this endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family, granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statutes to act in her best interest.

***

"Because [Judge] Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so next year by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand." (Internal quotation marks omitted.) Notopoulos v. Statewide Grievance Committee, 85 **Conn**. App. 425, 427-28 n.1, 857 A.2d 424 (2004).

5 General Statutes § 45a-63 provides in relevant part: "(a) The Council on Probate Judicial Conduct shall investigate every written complaint brought before it alleging conduct of judges of probate which may violate any law or canon of ethics applicable to judges of probate, or failure to perform properly the duties of the office, or

conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute, or final conviction of a felony or of a misdemeanor involving moral turpitude, or disbarment or suspension as an attorney-at-law, or the wilful failure to file a financial statement or the filing of a fraudulent financial statement required under section 45a-68. In making any such investigation the council may use the services of the Division of State Police within the Department of Public Safety, or any chief inspector, inspector or investigator in the Division of Criminal Justice, or may engage the services of private investigators if it deems such services necessary....

"(e) The council shall, not later than three business days after the termination of such investigation, notify the complainant and the judge that the investigation has been terminated and whether probable cause has been found that judicial misconduct under subsection (a) has been committed. If the council finds that judicial misconduct under subsection (a) of this section has not been committed, but the judge has acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial practice, the council may issue a private admonishment to the judge recommending a change in judicial conduct or practice."

6 The plaintiff also claimed that the trial court improperly concluded that there was clear and convincing evidence that he violated rule 8.4 (4) of the Rules of Professional Conduct, but the Appellate Court declined to review the claim because it was inadequately briefed. Notopoulos v. Statewide Grievance Committee, supra, 85 Conn. App. 433. The Appellate Court also declined to reach the plaintiff's claim that § 45a-63 violates his first amendment right to free speech because it determined that

the plaintiff had failed to preserve the claim properly by raising it before the trial court. Id., 433-34.

7 In his dissent, Judge Schaller accurately explicated the shifting evidentiary burdens in grievance committee actions when he stated that "the committee bears the initial burden of evidence to prove the ethics violation by clear and convincing evidence. Lewis v. Statewide Grievance Committee, 235 **Conn**. 693, 698, 669 A.2d 1202 (1996). When the committee presents sufficient evidence to meet the burden, the burden of evidence shifts to the alleged violator.... [A]fter the committee carries its burden, [t]he plaintiff must... provide evidence of an objective, reasonable belief that his statements were true. See Burton v. Mottolese, 267 **Conn**. 1, 49-52, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). The plaintiff has no burden to carry until the committee presents clear and convincing evidence of the violation. Here, after the plaintiff provides evidence that he had an objective, reasonable belief that his statements were true, the burden shifts back to the committee to rebut that evidence and, ultimately, to carry its burden of persuasion and to convince the finder of fact of the truth of the claimed violation. See, e.g., Somers v. Statewide Grievance Committee, 245 **Conn**. 277, 296-98, 715 A.2d 712 (1998) (holding that committee failed to carry its ultimate burden)." (Internal quotation marks omitted.) Notopoulos v. Statewide Grievance Committee, supra, 85 **Conn**. App. 436 (Schaller, J., dissenting).

8 The plaintiff testified to the committee that he believed that Judge Berman had no statutory authority to demand that Levine be paid for her services and argued that only the court-appointed attorney may receive compensation from the ward or the ward's assets under General Statutes § 45a-649 (b).

9 In its decision, the committee stated that the plaintiff "maintained that [Fuller] conferred no benefit upon the [plaintiff's] mother" and accused Fuller of "manufactur[ing] a bill in the amount of $3,285 during the course of approximately nine weeks." (Internal quotation marks omitted.)

10 The affidavit alleged, inter alia, that the trial court had demonstrated its bias by: (1) failing to rule on the plaintiff's motion for sanctions against counsel for the defendants in the underlying case; (2) granting meritless motions by opposing counsel; (3) making female plaintiffs in the underlying action feel that male attorneys received preferential treatment; and (4) imposing a sanction for the plaintiff's failure to appeal at a hearing, which was a " 'manifestation of . . . extraordinary vindictiveness . . . .' " Burton v. Mottolese, supra, 267 **Conn**. 47.

11 General Statutes § 45a-132a provides in relevant part: "In any matter before a court of probate in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such examination or the estate of the alleged incapable in such proportion as the judge of the court determines...."

12 We note that the Appellate Court declined to review the plaintiff's claim that § 45a-63, which provides for the discipline of probate judges for improper conduct, violates his first amendment right to free speech, because the plaintiff failed to preserve his claim at trial and did not ask the court to review the claim pursuant to State v. Golding, 213 **Conn**. 233, 239-40, 567 A.2d 823 (1989), or

the plain error doctrine. Notopoulos v. Statewide Grievance Committee, supra, 85 **Conn**. App. 434; see Practice Book § 60-5. The trial court, however, had addressed the plaintiff's claim that the statements contained in his letter were protected by the first amendment. It is also noteworthy that the committee did not claim in its brief to this court that the claim was unpreserved. Accordingly, we will review the plaintiff's constitutional claim that the accusations in his letter constituted political criticism that was protected by the first and fourteenth amendments.

---

13 After the plaintiff in Polk was arrested and jailed for his failure to appear in court to face charges of driving while intoxicated, the plaintiff accused a "dishonest and unethical district attorney and a perverse judge" of an "awkward attempt" to "assure [him] an unfair trial." Polk informed the media that both the judge and assistant district attorney were aware that the reason he had not shown up for the trial was that the trial had, in fact, been rescheduled for another date. Polk v. State Bar of Texas, supra, 374 F. Sup. 786.

14 We note that the plaintiff has not identified, much less engaged in an analysis of, several issues implicated by his constitutional claim. For example, our research reveals that several courts have held that "attorneys should be held to a higher standard when leveling criticism that may adversely affect the administration of justice." In the Matter of Westfall, 808 S.W.2d 829, 837 (Mo. 1991). Other courts have employed the criminal defamation standard set forth in Garrison, which was based on the seminal case of New York Times Co. v. Sullivan, 376 U.S. 254, 280, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) (to prove libel, public official must establish that statement was false or made in reckless disregard of whether it was false). The plaintiff has not addressed the

issue of whether this court should apply this higher standard to attorneys or whether our holding in Burton v. Mottolese, supra, 267 Conn. 46-47, that statements that are wholly conclusory and without factual support are in reckless disregard of the truth implicitly applied this higher standard. Moreover, we note that the court in New York Times Co. apparently applied a less deferential standard of review than the clearly erroneous standard to the facts found by the lower court in that case in light of the potential threat to the petitioner's first amendment rights. See New York Times Co. v. Sullivan, supra, 285. The plaintiff has not discussed this case, however, and has not asked this court to engage in such a deferential review, much less explained what such a review would entail. Accordingly, we apply the Burton standard for determining whether a statement made by an attorney about a judge is in reckless disregard of the truth and assume, without deciding, that our review of the facts found by the committee is governed by the ordinary clearly erroneous standard even though this claim implicates the plaintiff's first amendment rights.

15 We review the plaintiff's claim, even though the Appellate Court determined that it was inadequately briefed, because his claims regarding the violations of rule 8.2 (a) and rule 8.4 (4) share the same factual predicate and are inextricably intertwined.

16 Rule 8.4 (d) of the Indiana Rules of Professional Conduct is equivalent to rule 8.4 (4) of the Connecticut Rules of Professional Conduct.

17 Several courts have held that attorneys may be punished under the Rules of Professional Conduct for engaging in derogatory speech toward the judiciary even when the speech is protected by the first amendment. See

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1081-82, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991) (O'Connor, J., concurring) ("[l]awyers are officers of the court and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech"); United States v. Cooper, 872 F.2d 1, 3 (1st Cir. 1989) (attorney who "fill[s] a courtroom with a litany of speculative accusations and insults which raise doubts as to a judge's impartiality" may not take refuge in first amendment); Kentucky Bar Assn. v. Waller, 929 S.W.2d 181, 183 (Ky. 1996) (when attorney filed papers calling judge "lying incompetent ass-hole," court rejected attorney's first amendment challenge to discipline based on need to promote respect for and integrity of judiciary), cert. denied, 519 U.S. 1111, 117 S. Ct. 949, 136 L. Ed. 2d 837 (1997); In the Matter of Lacey, 283 N.W.2d 250, 251 (S.D. 1979) (attorney who told newspaper reporter that " 'state courts were incompetent and sometimes downright crooked' " was not protected under first amendment and should have voiced criticisms to state's judicial qualifications commission); see also Kentucky Bar Assn. v. Heleringer, 602 S.W.2d 165, 168 (Ky. 1980) (by using private grievance procedures, attorneys can avoid casting doubt upon competence and integrity of judiciary). Accordingly, even if we had concluded that it was clearly erroneous for the committee to find that the plaintiff's statements in the present case were in reckless disregard of the truth, it is far from clear that the plaintiff would have prevailed on this claim.

JOSEPH J. NOTOPOULOS v. STATEWIDE GRIEVANCE COMMITTEE

Connecticut Appellate Court

Notopoulos v. Statewide Grievance Committee, **85 Conn. App. 425**]

(AC 24702)

Foti, Schaller and Dranginis, Js. Argued April 22-officially released October 5, 2004

(Appeal from Superior Court, judicial district of New Britain, Murray, J.)

JosephJ.Notopoulos, pro se, the appellant (plaintiff).

Christopher L. Slack, assistant bar counsel, for the appellee (defendant).

Opinion

FOTI, J.

The plaintiff, Joseph J. Notopoulos, appeals from the judgment of the trial court dismissing in part his appeal from the reprimand issued to him by the defendant, the statewide grievance committee (committee). The committee had affirmed the decision of its reviewing committee, reprimanding the plaintiff for violating rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct. On appeal to this court, the plaintiff claims that the trial court improperly (1) concluded that there was clear and convincing evidence that he violated rule 8.2 (a), (2)

concluded that there was clear and convincing evidence that he violated rule 8.4 (4) and (3) applied General Statues § 45a-63 to him. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our disposition of the plaintiff's appeal. The plaintiff, an attorney, filed an application with the Probate Court for the district of West Hartford seeking appointment as the conservator of his mother's estate and person. The court, *Berman, J.*, appointed the plaintiff as conservator of his mother's estate, Denny Fuller as conservator of her person and Carolyn Levine to investigate her care and financial assets. The plaintiff had many disagreements with Judge Berman, including a disagreement regarding the fees of Levine and Fuller and one regarding a do not resuscitate order issued to Fuller. On May 29, 1999, the plaintiff's mother died, and the plaintiff and his brother were appointed coexecutors of her estate. Thereafter, the plaintiff claimed that he did not receive timely notice of the probate decree closing his mother's estate. The plaintiff wrote a letter to Renee Bradley, a member of the court staff, and sent copies of this letter to his brother and his mother's physician.(fn1)

Bradley forwarded this letter to Judge Berman, who then filed a complaint with the committee, claiming that the plaintiff "attacked [him] and [his] court in a fashion that violates the spirit and letter of the Rules of Professional Conduct." The matter was referred to the grievance panel for the Hartford-New Britain judicial district, which found probable cause that the plaintiff violated rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct. At a hearing conducted by a reviewing committee, the plaintiff testified and presented evidence, but Judge Berman did not attend, and the committee did not present any additional evidence or call any witnesses. On February 22, 2002, the reviewing

committee issued a decision reprimanding the plaintiff, finding, by clear and convincing evidence, that he violated rules 3.5 (3), 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. On April 18, 2002, this decision was affirmed by the entire committee.

On May 6, 2002, the plaintiff appealed the committee's decision to the Superior Court. In its memorandum of decision dated September 24, 2003, the court sustained the plaintiff's appeal as to rule 3.5 (3), but dismissed his appeal as to rules 8.2 (a) and 8.4 (4). This appeal followed.

"At the outset, we note that in reviewing a decision of the statewide grievance committee to issue a reprimand, neither the trial court nor this court takes on the function of a fact finder. Rather, our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct. . . . Additionally, in a grievance proceeding, the standard of proof applicable in determining whether an attorney has violated the [Rules] of Professional [Conduct] is clear and convincing evidence."(Internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, 245 **Conn**. 277, 290, 715 A.2d 712 (1998).

I

The plaintiff first claims that the court improperly concluded that there was clear and convincing evidence that he violated rule 8.2 (a) of the Rules of Professional Conduct. Specifically, the plaintiff argues that (1) the committee did not submit any evidence at the hearing and, therefore, it did not meet its burden of proving by clear and convincing evidence that he violated rule 8.2

(a) and (2) rule 8.2 (a) is inapplicable because the plaintiff was not acting in his professional capacity as an attorney when he wrote the letter. We do not agree.

A

The plaintiff first argues that he provided adequate evidence in support of his statements that Judge Berman extorted funds, and that, because this was the only evidence in the record, the committee failed to prove, by clear and convincing evidence, that he violated rule 8.2 (a) of the Rules of Professional Conduct. We do not agree.

We begin by noting that the plaintiff incorrectly states that the evidence he presented at the hearing was the only evidence in the record. While the plaintiff was the only party to present evidence or to testify at the hearing, that does not make his evidence the only evidence in the record, nor does it preclude the committee's finding that there was clear and convincing evidence of the plaintiff's violation of rule 8.2 (a). Specifically, the plaintiff failed to note that the committee already had in the record evidence in support of its decision, including the grievance complaint with the plaintiff's answer, the plaintiff's letter to Judge Berman, Judge Berman's letter to the committee and documents from the probate proceedings upon which the plaintiff based the allegations contained in his letter. Furthermore, we note that the committee, as the fact finder, was free to weigh the plaintiff's evidence and to determine the credibility of his testimony; it was not required to accept it as the truth. We conclude therefore that the plaintiff's contention that the committee failed to meet its burden of proof is incorrect.

We next conclude that the court did not improperly conclude that there was clear and convincing

evidence that the plaintiff violated rule 8.2 (a). Rule 8.2 (a) provides in relevant part: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...." Because the committee reasonably could have found that the statements contained in the plaintiff's letter were false in violation of rule 8.2 (a), the plaintiff must now provide evidence of an objective, reasonable belief that his statements were true.(fn2) See *Burton* v. *Mottolese*, 267 **Conn**. 1, 49-52, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). The plaintiff has not met that burden.

The plaintiff provided no factual basis for the statements contained in his letter. His sole argument on appeal is that, at the hearing, he presented evidence of Judge Berman's extortion of money for Levine, who the plaintiff claims was not legally entitled to the funds. Specifically, the plaintiff argues that his evidence proves that Judge Berman "personally" profited from this transaction by extracting $150 from Levine's fee as a probate fee. The plaintiff's argument is wholly conclusory and finds no support in the record. Evidence of extracting a probate fee does not prove that Judge Berman personally took these funds. The plaintiff failed to provide any evidence in support of his statement that Judge Berman extorted funds. Consequently, the court reasonably could have concluded that the plaintiff's statements were either knowingly false or made with reckless disregard as to their truth or falsity. Accordingly, the court did not improperly conclude that there was clear and convincing evidence that the plaintiff violated rule 8.2 (a).

B

The plaintiff next claims that the committee improperly applied rule 8.2 (a) to him because he was acting in his individual capacity as a pro se party when he wrote the letter and not in his professional capacity as an attorney. We do not agree.

"The Rules of Professional Conduct bind attorneys to uphold the law and to act in accordance with high standards in both their personal and professional lives." *Statewide Grievance Committee* v. *Egbarin*, 61 **Conn. App.** 445, 450, 767 A.2d 732, cert. denied, 255 **Conn.** 949, 769 A.2d 64 (2001); see also *Statewide Grievance Committee* v. *Shluger*, 230 **Conn.** 668, 679, 646 A.2d 781 (1994); Rules of Professional Conduct, Preamble. A rule is applicable solely to attorneys acting in their professional capacity, however, where the language of the rule or its relevant commentary clearly suggests it. See *Somers* v. *Statewide Grievance Committee*, supra, 245 **Conn.** 287-88; *Pinsky* v. *Statewide Grievance Committee*, 216 **Conn.** 228, 236, 578 A.2d 1075 (1990) (by its express terms, rule 4.2 of Rules of Professional Conduct, which proscribes communication between attorney and represented party, applies only when attorney is representing client). Because there is no indication that rule 8.2 (a), either in its language or commentary, is applicable solely to an attorney acting in his or her professional capacity, we cannot conclude that the court improperly applied it to the plaintiff.(fn3)

II

The plaintiff next claims that the court improperly concluded that there was clear and convincing evidence that he violated rule 8.4 (4), which prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice. Specifically, the plaintiff argues

that there was never any "administration of justice" involved in this matter. We decline to address the plaintiff's claim because we are not required to review claims that are inadequately briefed. The plaintiff's argument is based on nothing more than mere assertion devoid of any authoritative support or real analysis. "Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *State* v. *Anderson*, 67 **Conn. App.** 436, 441 n.8, 787 A.2d 601 (2001). For these reasons, we decline to review the plaintiff's claim.

III

Lastly, the plaintiff claims that § 45a-63, which provides for the discipline of probate judges for improper conduct, did not require him to bring his complaints about Judge Berman before the Council on Probate Judicial Conduct.(fn4) Specifically, the plaintiff claims that § 45a-63 violates his first amendment right to free speech. Because the plaintiff did not properly preserve his claim, we decline to review it.

"It is well established that generally this court will not review claims that were not properly preserved in the trial court. . . . [The plaintiff] may prevail on a claim of constitutional error not preserved at trial, however, if [he] satisfies the four part standard set forth in *State* v. *Golding*, [213 **Conn.** 233, 239-40, 567 A.2d 823 (1989)]." (Internal quotation marks omitted.) *State* v. *Laracuente*, 57 **Conn. App.** 91, 93-94, 749 A.2d 34, cert. denied, 253 **Conn.** 923, 754 A.2d 798 (2000); see also Practice Book § 60-5. The plaintiff, however, does not ask this court to review his claim pursuant to *Golding* or the plain error doctrine. See Practice Book § 60-5. "The [plaintiff's] failure to address the four prongs of *Golding* amounts to an inadequate

briefing of the issue and results in the unpreserved claim being deemed abandoned." (Internal quotation marks omitted.) *State* v. *Laracuente*, supra, 94. For these reasons, we decline to review the plaintiff's unpreserved claim.

The judgment is affirmed.

In this opinion DRANGINIS, J., concurred.

Footnote:

1 The letter states in relevant part: "Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court, I found it prudent to completely distribute the assets of this estate at the earliest practicable moment .... Consequently, the assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine, where those assets shall forever so remain....

"It is hardly surprising that Mr. Berman is now some [five and one-half] months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office that this family has been compelled to abide.

"Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the [plaintiff], without legal authority, of money for his crony Mrs. Levine on January 25, 1999 resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb

the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through this endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family, granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statues to act in her best interest.

***

"Because Mr. Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so next year by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand."

2 The dissent argues that the committee did not meet its burden of proving, by clear and convincing evidence, that the statements contained in the plaintiff's letter were false in violation of rule 8.2 (a), thereby preventing the burden from shifting to the plaintiff to prove that he had an objective, reasonable belief that these statements were, in fact, true. Specifically, the dissent

argues that "[t]he panel assumed, without having considered enough evidence to know, that the plaintiff's statements were false or reckless and thereby found a violation based on mere assumption, rather than on clear and convincing evidence." While we agree with the dissent regarding the appropriate shift of burden in this situation, we respectfully disagree with its conclusion that the committee did not meet its burden of proving, by clear and convincing evidence, the falsity of the plaintiff's statements. We conclude that the committee had before it evidence of the falsity of the plaintiff's statements adequate to shift the burden to the plaintiff to prove that he had an objective, reasonable belief that his statements were true. Specifically, we conclude that from Judge Berman's letter to the committee, which stated, inter alia, that the plaintiff "personally attacked [him] and [his] court in a fashion that violates the spirit and letter of the Rules of Professional Conduct," the committee could reasonably have concluded that Judge Berman believed the statements to be false. From this evidence, the committee reasonably could have concluded that the plaintiff's statements were, in fact, false and, therefore, in violation of rule 8.2 (a). As a result, we conclude that the burden now rests with the plaintiff to prove that he had an objective, reasonable belief that his statements were true.

3 We further note that even if we assume, arguendo, that rule 8.2 (a) applies only to attorneys acting in their professional capacity, it appears that the plaintiff was acting in such a capacity when he wrote the letter. Specifically, we note that the letter at issue was written on the plaintiff's professional letterhead, which contained his name, address, phone number and, in capital letters, "ATTORNEY AT LAW."

4 The court, in its memorandum of decision, cited to § 45a-63 merely as a recommendation for a proper means by which the plaintiff could make his accusations against Judge Berman.

SCHALLER, J., dissenting. I respectfully disagree with the majority, which affirms the trial court's dismissal of the appeal by the plaintiff, Joseph J. Notopoulos, from the reprimand of the defendant, the statewide grievance committee. I do so without condoning the plaintiff's unnecessarily harsh and intemperate manner of criticizing the probate judge in question. I am compelled to dissent, however, because I believe that the reviewing grievance committee's decision to reprimand the plaintiff, which the statewide grievance committee and the trial court affirmed, was based on inappropriate assumptions, inadequate evidence and improper procedures.

The majority has capably and accurately stated most of the important facts, procedural history and applicable law. The plaintiff's intemperate remarks in his letter to Renee Bradley are part of the record. As noted, Judge Berman filed a complaint with the statewide grievance committee (committee) by letter. Although he took offense at the plaintiff's remarks, it is significant, in terms of evidence, that he did not specifically refute the substance of the allegations or explain his actions, which the plaintiff had criticized. After several additional submissions to the committee, the matter proceeded to a hearing. Although, unquestionably, the committee has the burden of proving violations by clear and convincing evidence, it chose to call no witnesses and, instead, relied solely on the written record. The only witness to testify before the committee was the plaintiff, who explained and elaborated on his charges of misconduct against the probate judge.

At the outset, I note on the basis of our previous case law and as a matter of logic that multiple burdens of proof exist in this case. There exists, generally, a "burden of evidence," which is "[t]he duty of a party to proceed with evidence at the beginning, or at any subsequent state, of the trial, in order to make or meet a prima facie case.... This duty, otherwise, and perhaps more appropriately, called the burden of producing evidence, may arise at different stages of the trial, even be borne successfully once, only to arise again at a later stage... .[It is the burden of] making a prima facie showing as to each factual ingredient necessary to establish a prima facie case. Having done this, a plaintiff has discharged his burden of evidence, and the burden shifts to the defendant to produce, if he desires, competent controverting evidence, which, if believed, will offset the plaintiff's prima facie case." (Citation omitted.) Ballentine's Law Dictionary (3d Ed. 1969). This is to be distinguished from the "burden of persuasion," that is "[t]he burden of convincing the jury or the court as the trier of the issue or issues of fact; the ultimate burden of proof." Id.

As I stated earlier, it is well settled that the committee bears the initial burden of evidence to prove the ethics violation by clear and convincing evidence. *Lewis* v. *Statewide Grievance Committee*, 235 **Conn**. 693, 698, 669 A.2d 1202 (1996). When the committee presents sufficient evidence to meet the burden, the burden of evidence shifts to the alleged violator. As the majority correctly notes, after the committee carries its burden, "[t]he plaintiff must... provide evidence of an objective, reasonable belief that his statements were true. See *Burton* v. *Mottolese*, 267 **Conn**. 1, 49-52, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004)." The plaintiff has no burden to carry until the committee presents clear and convincing evidence of the violation. Here, after the

plaintiff provides evidence that he had an objective, reasonable belief that his statements were true, the burden shifts back to the committee to rebut that evidence and, ultimately, to carry its burden of persuasion and to convince the finder of fact of the truth of the claimed violation. See, e.g., *Somers* v. *Statewide Grievance Committee*, 245 **Conn**. 277, 296-98, 715 A.2d 712 (1998) (holding that committee failed to carry its ultimate burden).

At this point, I depart from the majority's interpretation of the case. I focus on what the committee and the court considered to be the most serious charge against the plaintiff, that is, the plaintiff's claim of "extortion" on the part of the judge. Whereas I believe it is likely that the plaintiff was using the word "extortion" in a colloquial sense-rather than making a charge, literally, of criminal extortion-the committee seemed to assume for purposes of its conclusions that the language meant, quite literally, criminal extortion. It thereupon determined that the plaintiff had not substantiated his charge and, therefore, either he made the statement knowing that it was false or made it with reckless disregard as to its truth or falsity. The plaintiff accused the judge of "reprehensible extortion from the [plaintiff], without legal authority, of money for his crony . . . ." If the plaintiff had intended to charge criminal extortion as such, the words "reprehensible" and "without legal authority" would be repetitive and irrelevant.

Even the committee recognized on some level the metaphoric and colloquial use of the term when it concluded that he had "likened this to criminal extortion." If, in fact, the plaintiff claimed that the judge's conduct was merely *likened* to criminal extortion, the plaintiff's explanations of his observations and conclusions that charging fees, "threatening" a mental examination of his mother and asserting that a substantial cash bond could be

imposed were sufficient, in my view, to shift the burden of evidence back to the committee. Once the plaintiff offered some reasonable explanations of the conduct that he concluded was similar to extortion, the committee had the burden of persuasion on the issue. Clear and convincing evidence is a high standard indeed and rarely, if ever, can it be met without the committee producing some witnesses and more evidence than an equivocal letter. "[C]lear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier *a reasonable belief that the facts asserted are highly probably true*, that the probability that they are true or exist is *substantially greater* than the probability that they are false or do not exist." (Emphasis added; internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, supra, 245 **Conn**. 290-91.

If the plaintiff's remarks about the probate judge were to be taken literally, as a claim of criminal extortion in violation of General Statutes § 53a-119 (5), I believe the same result would apply. Under § 53a-119 (5) (H), "[a] person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will . . . use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely . . . ." The plaintiff's explanation that the judge threatened to impose a substantial cash bond or a mental examination of the plaintiff's mother unless the plaintiff paid certain fees could constitute criminal extortion.

Whether accepted ultimately, the plaintiff's testimony concerning the judge's conduct was sufficient, once again, to shift the burden of evidence to the committee. Once that testimony was offered, the committee, to meet its burden of persuasion by clear and convincing evidence, could not rely solely upon the plaintiff's assertions in his letter and the judge's brief complaint.

In this case, the committee rejected out of hand the plaintiff's assertions that the judge acted improperly. Given our prior cases, the proper procedure, after the plaintiff had testified as to the factual basis for his beliefs, was for the panel to call witnesses to explain the judge's actions under the circumstances. The panel assumed, without having considered enough evidence to know, that the plaintiff's statements were false or reckless and thereby found a violation based on mere assumption, rather than on clear and convincing evidence.

Although the committee may well have weighed the evidence against the plaintiff's interests ultimately, in that event the decision at least would have been based on evidence rather than assumption. To assume lack of veracity merely because an attorney speaks harshly or even offensively about a judge's actions is not proper under any circumstances. *It is a simple matter, once some explanation is offered, to call a witness to rebut and explain.* I note that the record contains no clear and convincing documentary evidence explaining the judge's actions that the plaintiff cites in support of his statements. It would appear that the sole basis of the violation and reprimand was the committee's incredulous reaction to the plaintiff's statements; the committee lacked explanations, oral or documentary, as to why the probate judge did what he did.

Speech rights, qualified as they are under these circumstances, should not be treated so lightly as to determine violation of the Rules of Professional Conduct on the basis of assumption alone. Abusive and insulting remarks, however offensive and unwelcome they may be, cannot alone support a violation when an explanation is offered. For the foregoing reasons, I would reverse the judgment of the trial court. Accordingly, I respectfully dissent.

Joseph Notopoulos

v. Statewide Grievance Committee

Connecticut Superior Court

Docket Number: CV010510911S

Venue: Judicial District of New Britain at New Britain

File Date: September 24, 2003

Caption Date: September 24, 2003

Murray, J.

Opinion Title: **MEMORANDUM OF DECISION**

Joseph **Notopoulos**, an attorney and commissioner of the Connecticut Superior Court, appealed this decision of the statewide grievance committee. It reprimanded him for violating the Rules of Professional Conduct. The committee's decision is affirmed in concluding that **Notopoulos** violated Rules 8.2(a)(fn1) and 8.4(4),(fn2) but it is rescinded in its conclusion that he violated Rule 3.5(3).(fn3)

Attorney **Notopoulos** was admitted to the Connecticut Bar and is a commissioner of the Superior Court.(fn4) This case arose from conservator proceedings in behalf of Notopoulos' mother and the subsequent probating of her estate upon her death. While the mother was in failing health, **Notopoulos** filed an application with the Connecticut Probate Court sitting in West Hartford and sought the appointment of a conservator of his mother's

estate and person. At a hearing before Judge John A. Berman, **Notopoulos** objected to the court's receiving testimony from a representative of the department of social services. He further disagreed with the court's appointment of Carolyn Levine to investigate his mother's care and financial assets. Ultimately, the court appointed **Notopoulos** as conservator of his mother's estate and on January 20, 1999 appointed Denny Fuller conservator of her person.

Over the next four months, **Notopoulos** had further disagreements with Judge Berman over, amongst other things, the payment of Levine and Fuller's fees and also over a "do not resuscitate order" which the judge issued to Fuller. This order permitted Fuller to refuse medical treatment for Notopoulos' mother without first consulting with either **Notopoulos** or his brother, who is also an attorney. The mother died on May 29, 1999. Thereafter, her estate was opened in the West Hartford Probate Court and **Notopoulos** with his brother were appointed co-executors of the estate. Subsequently, **Notopoulos** became dissatisfied with the administration of the estate when he did not receive timely notice of the probate decree closing the estate. It was at this point in the proceedings that Attorney Joseph **Notopoulos** wrote a letter, which was critical for these proceedings, to Renee Bradley, a member of the court staff. In this letter, he sharply criticized the court and Judge Berman. A copy of this letter was sent to Notopoulos' brother, Philip J. **Notopoulos**, and to his mother's physician, Julian Parsons. The letter, in part, reads:

However, these obligations in no way run to the personal whims and fancies of an elected town politician, in a lame duck term he cannot even complete, who has clearly prostituted the integrity of his office and is presently

running it as a financial spoils system for the cronies he calls his "professional conservators" in brazen violation of Section B of Cannon 2 of the Code of Probate Judicial conduct . . . Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court . . . Consequently, the assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine . . . It is hardly surprising that Mr. Berman is now some 5 1/2 months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office that this family has been compelled to abide . . . Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the undersigned, without legal authority, of money for his crony Mrs. Levine on January 25, 1999 resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through his endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother's and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family. granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statutes to act in her best interest . . . In this regard, most telling was his opportunistic, cynical and readily transparent exploitation of my late mother, in end of life

circumstances with rapidly escalating medical expenses, to fund a private Marshall Plan for the support, care and feeding of his crony Denny Fuller, her court appointed dependent who conferred her with no benefit whatever and contributed absolutely nothing to her medical care but nonetheless managed to line his pockets with more than $3600 of her funds in less than 4 months . . . Because Mr. Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand.

Upon receiving this letter from Attorney Joseph **Notopoulos**, Judge Berman filed a complaint with the statewide grievance committee. That matter was referred to the New Britain/Hartford Judicial District grievance panel. It concluded there was probable cause to believe that **Notopoulos** violated Rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct. The matter was then referred to the statewide grievance committee for hearing. This hearing before a reviewing committee of the statewide grievance committee took place on April 3, 2001. At that proceeding, Attorney **Notopoulos** appeared and presented evidence. Judge Berman did not personally appear. On February 22, 2002 the reviewing committee issued a decision reprimanding **Notopoulos**. It found, by clear and convincing evidence, that the letter written by Attorney **Notopoulos** violated rules 8.2(a), 8.4(4), and 3.5(3) of the Rules of Professional Conduct.(fn5) The decision of the reviewing committee was affirmed by the entire statewide

grievance committee on April 18, 2002. On May 6, 2002 **Notopoulos** appealed this decision to the Superior Court. We heard oral argument on June 11, 2003.

"Upon appeal, the court shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) In violation of constitutional [sic], rules of practice or statutory provisions; (2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Practice Book §2-38(f).

Although the statewide grievance committee is not an administrative agency, ". . . the scope of the court's review of the [statewide grievance committee's] decision is similar to the limited scope of review given to the decision of an administrative body. In reviewing a decision of the statewide grievance committee to issue a reprimand, . . . the trial court [does not] take on the function of a fact finder. Rather, our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct . . . Additionally, in a grievance proceeding, the standard of proof applicable in determining whether an attorney has violated the [Rules] of Professional [Conduct] is clear and convincing evidence . . . The burden is on the statewide grievance committee to establish the occurrence of an

ethics violation by clear and convincing proof." (Citations omitted; internal quotation marks omitted.) *Daniels v. Statewide Grievance Committee*, 72 Conn.App. 203, 209, 804 A.2d 1027 (2002); see also *Yamin v. Statewide Grievance Committee*, 53 Conn.App. 98, 100-01, 728 A.2d 1128 (1999).

I

Notopoulos was reprimanded for violating Rule 8.2(a) of the Rules of Professional Conduct. This rule provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. **Notopoulos** argues that the rule does not apply here because he was not acting in a representative capacity when he wrote the letter to Renee Bradley of Judge Berman's court staff. He argues that the rule is inapplicable because he was acting only in a pro se capacity. We conclude otherwise.

"The Rules of Professional Conduct bind attorneys to uphold the law and to act in accordance with high standards *in both their personal and professional lives.*" (Emphasis added.) *Statewide Grievance Committee v. Egbarin*, 61 Conn.App. 445, 450, 767 A.2d 732, cert. denied, 255 Conn. 949, 769 A.2d 64 (2001); *Statewide Grievance Committee v. Shluger*, 230 Conn. 668, 679, 646 A.2d 781 (1994); see Preamble to Rules of Professional Conduct. As long as the rule being applied is not limited, by its terms, to only apply when an attorney is representing a client,(fn6) it does not matter whether an attorney was acting in a representative capacity or a pro se capacity at the time of the rule violation. *Somers v. Statewide Grievance Committee*, 245 Conn. 277, 287-89, 715 A.2d 712 (1998); *Esposito v. Presnick*, 15 Conn.App. 654, 667,

546 A.2d 899, cert. denied, 209 Conn. 819, 551 A.2d 755 (1988). "Whether an attorney represents himself or not, his basic obligation to the court as an attorney remains the same. He is an officer of the court no matter who is the client. Disciplinary proceedings not only concern the rights of the lawyer and the client, but also the rights of the public and the rights of the judiciary to ensure that lawyers uphold their unique position as officers [of the court]and commissioners of the [Superior] court.(fn7) An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system. The special relationship between courts and their officers, [i.e.,] those attorneys who practice before them, requires a court to monitor the conduct of those officers of the court. The purpose of such control is to protect the public from the effects of possible future misconduct by an officer of the court. The protection needed is no less necessary because the miscreant behavior occurs while the officer represents himself." (Citations omitted.) *In The Matter Of Presnick*, 19 Conn.App. 340, 345-46, 563 A.2d 299, cert. denied, 213 Conn. 801, 567 A.2d 833 (1989). The prohibitions of the rule are applicable whether an attorney is representing a client or acting pro se. Here, the reviewing committee concluded that the statements **Notopoulos** made about Judge Berman and the probate court were done with reckless disregard for the truth concerning the qualifications or integrity of Judge Berman. This rule does not specify the standard for determining what is "reckless disregard for the truth."

The court agrees with the reviewing committee that it is not necessary to find that **Notopoulos** had "actual malice" against Judge Berman. Therefore, the court does not apply a subjective test, similar to that used when determining whether criticism of a public official would. result in civil or criminal liability. See *New York Times v.*

Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Garrison v. State of Louisiana*, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). An attorney disciplinary proceeding results in neither civil nor criminal liability. It is, therefore, of no consequence whether **Notopoulos** actually believed that his statements about Judge Berman and the probate court were true.

Although the Supreme Court has not yet addressed this issue, the majority of courts of other jurisdictions apply an objective test in the context of attorney disciplinary procedures. The cases seek to determine what a reasonable attorney would do, or would say, under similar circumstances. See, e.g., *In re Disciplinary Action Against Graham*, 453 N.W.2d 313 (Minn. 1990), cert. denied sub nom *Graham v. Weraz*, 498 U.S. 820, 111 S.Ct. 67, 112 L.Ed.2d 41 (1990); *Matter of Westfall*, 808 S.W.2d 829 (Mo. en banc 1991), cert. denied 502 U.S. 1009, 112 S.Ct. 648, 116 L.Ed.2d 665 (1991); *In re Evans*, 801 F.2d 703 (4th Cir 1986), cert. denied, 480 U.S. 906, 107 S.Ct. 1349, 94 L.Ed.2d 520 (1987); *Burton v. Statewide Grievance Committee*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 573377 (September 24, 1998, McWeeny, J.), rev'd and remanded on other grounds, 60 Conn.App. 698, 70 A.2d 1027 (2000). This court concludes that an objective standard applies and the court should look to what a reasonable attorney would do under the circumstances.

The court agrees with the reviewing committee that it is clear that **Notopoulos** strongly disagreed with the appointments of Carolyn Levine and Denny Fuller as agents of the probate court. It is also clear that he disagreed with actions taken by Levine and Fuller and with their fees. The committee stated that their decision may have been different if **Notopoulos** had limited his statements to

criticism of those issues. **Notopoulos**, however, personally attacked Judge Berman and the West Hartford Probate Court and ascribed actions and motives to Judge Berman totally unsupported by any evidence. In his letter **Notopoulos** alleged, amongst other things, that Judge Berman "prostituted the integrity of his office," engaged in "reprehensible extortion" and was a "demonstrated financial predator." These statements directly attacked the integrity of Judge Berman.(fn8) None of these statements were supported by evidence. There was, therefore, no reasonable basis for making them and no reasonable attorney in these circumstances should have done so. The letter, in pertinent part, was therefore written with reckless disregard for the truth concerning the qualifications and integrity of Judge Berman. The grievance committee had clear and convincing evidence that **Notopoulos** violated Rule 8.2(a) of the Rules of Professional Conduct.

II

Attorney **Notopoulos** was also reprimanded for violating Rule 8.4(4) of the Rules of Professional Conduct. This rule provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Case law reveals that the scope of the rule covers a wide range of conduct.(fn9) Courts in other jurisdictions have found that statements by an attorney that are demeaning to the judiciary, and that violate Rule 8.2(a) of the Rules of Professional Conduct, may also violate Rule 8.4(4). See *Matter of Westfall*, *supra*, 808 S.W.2d 829; *In re McClellan*, 754 N.E.2d 500 (Ind. 2001). This court concludes that there was clear and convincing evidence that the statements by **Notopoulos**, which attacked the integrity of Judge Berman without any reasonable factual basis, were prejudicial to the administration of justice. The grievance committee,

therefore, was correct in concluding that **Notopoulos** violated Rule 8.4(4).

III

Attorney Joseph **Notopoulos** was further reprimanded for violating Rule 3.5(3) of the Rules of Professional Conduct. This rule provides that "[a] lawyer shall not . . . engage in conduct intended to disrupt a tribunal."(fn10) Here, the decision by the reviewing committee holds, in conclusory fashion, that **Notopoulos** violated Rule 3.5(3). It contains no explicit subordinate findings that **Notopoulos** had the specific intent to disrupt the tribunal. The record is also silent concerning any evidence upon which this finding of Notopoulos' intent can be based. Certainly the record does not contain clear and convincing evidence that, in writing the letter, **Notopoulos** had an intent to disrupt a "tribunal."

Rule 3.5(3) is generally intended to cover disruptive conduct either immediately before, during or after an official proceeding. The ABA/BNA Lawyers' Manual on Professional Conduct catalogues the rule in connection with "courtroom speech and conduct." See American Bar Association/Bureau of National Affairs Lawyers' Manual on Professional Conduct §61:901-19. Connecticut decisions also support this construction of the rule.

In *Prucker v. Statewide Grievance Committee*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 541436 (June 9, 1995, Maloney, J.), aff'd., 41 Conn.App. 906, 675 A.2d 9, cert. denied, 237 Conn. 933, 677 A.2d 1372 (1996), the court found that an attorney had violated Rule 3 5(3) when he shouted an expletive and walked out of an informal workers'

compensation hearing. The attorney thought the hearing had concluded but the compensation commissioner testified that the hearing had not finished. However, in *Statewide Grievance Committee v. Whitney*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 511142 (August 18, 1992, Maloney, J.) (7 Conn. L. Rptr. 215, 7 C.S.C.R. 1029), aff'd., 227 Conn. 829, 633 A.2d 296 (1993), the court held that the refusal of an attorney to attend any pretrial conferences, despite the judge's order to do so, did not violate Rule 3.5(3) because there was no evidence that the attorney intended to disrupt the court. Similarly, in *Melnick v. Statewide Grievance Committee*, Superior Court, judicial district of Fairfield, Docket No. 319511 (June 26, 1995, Levin, J.), the court held that a letter written by an attorney to a neighbor in connection with a pending grievance complaint did not violate Rule 3.5(3) because there was no intention to disrupt a tribunal. The absence of clear and convincing evidence in this record showing an intent by **Notopoulos** to disrupt a tribunal and the failure of the grievance committee to make a subordinate finding on the requisite intent requires the court to sustain the appeal concerning any violation of Rule 3.5(3).

IV

Finally, Attorney **Notopoulos** argues that the statements contained in his letter are absolutely protected by the First Amendment to the United States Constitution. This court disagrees. First Amendment protections are not absolute. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573, 122 S.Ct. 1700, 152 L.Ed.2d 771 (2002). "Although a lawyer does not surrender [his] freedom of expression upon admission to the bar, once admitted, a lawyer must temper [his] criticisms in accordance with professional standards of conduct." (Citations omitted.)

Burton v. Statewide Grievance Committee, 48 Conn.Sup. 94 (2002), aff'd., 79 Conn.App. 364 (2003).

In the context of disciplinary proceedings, an attorneys right of free speech must be balanced with the state's interest in preserving the integrity of the judicial system. *Id.*; see also *Burton v. Statewide Grievance Committee*, *supra*, Superior Court, Docket No. 573377. Because lawyers have an intimate knowledge of the legal system, they are perceived as uniquely qualified to evaluate judges. See *The Florida Bar v. Ray*, 797 So.2d 556, 559-60 (Fla. 2001), cert. denied, 535 U.S. 930, 122 S.Ct. 1302, 152 L.Ed.2d 214 (2002). The public's perception of judges and of the legal system is greatly influenced by the statements and opinions of attorneys who participate in the legal system. The official commentary to Rule 8.2 of the Rules of Professional Conduct provides that ". . . false statements by a lawyer can unfairly undermine public confidence in the administration of justice." Here, the significant state interest in preserving public confidence in the judicial system outweighs the free speech rights of **Notopoulos** to make reckless accusations about the integrity of a probate judge.

Additionally, as officers of the court, lawyers must comply with stricter standards of conduct than would be expected of non-lawyers. See *In re Sawyer*, 360 U.S. 622, 646-47, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959) (Stewart, J. concurring). "Judges are not exempt from just criticism, and whenever there is proper ground for serious complaint against a judge it is the right and duty of a lawyer to submit his grievances to the proper authorities, but the public interest and the administration of the law demand that the courts should have the confidence and respect of the people. Unjust criticism, insulting language and offensive conduct toward the judges, personally, by

attorneys, who are officers of the court, which tend to bring the courts and the law into disrepute and to destroy public confidence in their integrity, cannot be permitted. (Citations omitted.) *In re Evans*, *supra*, 801 F.2d 707.

Attorney **Notopoulos** could have brought his complaints about Judge Berman to the attention of the Council on Probate Judicial Conduct. See General Statutes §45a-63 et seq. Making reckless accusations in a letter sent to the probate court and to a local physician erodes public confidence in the judiciary and attacks the integrity of the judicial system. An officer of the court is charged with acting in a manner consistent with upholding and preserving public confidence in the judicial system whether the attorney is representing a client or is acting on his own behalf. "False statements, made with reckless disregard for the truth, do not enjoy constitutional protection." (Citations omitted; internal quotation marks omitted.) *Matter of Palmisano*, 70 F.3d 483, 487 (7th Cir. 1995), cert. denied, 517 U.S. 1223, 116 S.Ct. 1854, 134 L.Ed.2d. 954 (1996); *Burton v. Statewide Grievance Committee*, *supra*, 48 Conn.Sup. 94.

The appeal is dismissed as to the decision reprimanding Joseph **Notopoulos** for violating Rules 8.2(a) and 8.4(4). The appeal is sustained as to Rule 3.5(3) because upon review of the entire record, this court concludes that no violation of Rule 3.5(3) has been proven by clear and convincing evidence.

William P. Murray

A judge of the Superior Court

Footnotes

1. Rule 8.2(a) provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge."

2. Rule 8.4(4) provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice."

3. Rule 3.5(3) provides that "[a] lawyer shall not . . . engage in conduct intended to disrupt a tribunal."

4. Upon admission to the bar in Connecticut, an attorney takes two oaths. One is the oath of an attorney pursuant to General Statutes §1-25. The other is the oath of a commissioner of the Superior Court pursuant to Practice Book §2-10. See General Statutes §51-85.

5. The committee also considered comments contained in Notopoulos' answer to the grievance complaint, which were similar in content and criticism of the Probate Court and Judge Berman.

6. See *Pinsky v. Statewide Grievance Committee*, 216 Conn. 228, 578 A.2d 1075 (1990).

7. An attorney is not merely the servant or agent of his client. His oath imposes on him duties and obligations to the court as well as to his client. He is an officer of the court and like the court itself, under a duty to advance the ends of justice. *Brunswick v. Inland Wetlands Commission*, 25 Conn.App. 543, 547, 596 A.2d 436, cert. granted in part, 220 Conn. 929, 598 A.2d 1100 (1991), reversed on other grounds, 222 Conn. 541, 610 A.2d 1260, on remand, 29 Conn.App. 634, 617 A.2d 466 (1992).

8. Such statements may violate Rule 8.2(a) even if not intended to question the court's integrity if they might be construed in that manner. See *Evans v. Commissioner of Correction*, 37 Conn.App. 672, 676 n.6, 657 A.2d 1115, cert. denied, 234 Conn. 912, 660 A.2d 354 (1995); *Wendt v. Wendt*, 59 Conn.App. 656, 694-97, 757 A.2d 1225, cert. denied, 255 Conn. 918, 763 A.2d 1044 (2000); see also *Burton v. Statewide Grievance Committee*, 48 Conn.Sup. 94 (2002), aff'd., 79 Conn.App. 364 (2003).

9. See, e.g., *Daniels v. Statewide Grievance Committee*, *supra*, 72 Conn.App. 203 (failure of lawyer to timely pay personal default judgment that had been rendered against him); *Statewide Grievance Committee v. Gifford*, 76 Conn.App. 454, 820 A.2d 309 (2003) (failure of lawyer to answer grievance complaint); *Statewide Grievance Committee v. Whitney*, 227 Conn. 829, 633 A.2d 296 (1993) (refusal of attorney to attend scheduled pretrial conferences); *Statewide Grievance Committee v. Fountain*, 56 Conn.App. 375, 743 A.2d 647 (2000) (forging and notarizing affidavit by attorney); *Statewide Grievance Committee v. Solomon*, Superior Court, judicial district of New Haven at Meriden, Docket No. 269373 (Dec. 12, 2000, Levine, J.) (refusal by attorney to record deed until fee was paid); *Statewide Grievance Committee v. Timbers*, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. 152030 (Dec. 18, 1996, Lewis, J.) (although not proven by clear and convincing evidence in this case, repeated failure to pay occupational tax could violate Rule 8.4(d)).

10. Even though Rules 3.1 through 3.9 of the Rules of Professional Conduct are listed under the heading "Advocate," the rules do not only apply to attorneys acting in a representative capacity, as **Notopoulos** argues. An attorney may also be an advocate on behalf of his own

interests. See *Somers v. Statewide Grievance Committee*, *supra*, 245 Conn. 288 n.16.

STATEWIDE GRIEVANCE COMMITTEE

Grievance Complaint #00-0310

John A. Berman, Complainant

vs.

Joseph J. Notopoulos, Respondent

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 300 Grand Street, Waterbury, Connecticut on April 3, 2001. The hearing addressed the record of the complaint filed on October 13, 2000, and the probable cause determination filed by the New Britain/Hartford Judicial District, Geographical Areas 12 & 16 Grievance Panel on December 4, 2000, finding that there existed probable cause that the Respondent violated Rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant and to the Respondent on February 9, 2001. The Complainant did not appear, having stated in a letter dated February 15, 2001 that he was relying on the evidence in the record. The Respondent appeared and testified. Exhibits were admitted into evidence. In addition to pre-hearing factual submissions by both parties, the Respondent submitted a brief received by the Statewide Grievance Committee on March 22, 2001.

This reviewing committee makes the following findings by clear and convincing evidence:

The Complainant is a Judge of the Probate Court for the District of West Hartford. The Respondent became involved with the West Hartford Probate Court in his role as a conservator and co-executor on behalf of his mother. On September 8, 2000, the Respondent sent a letter to Renee Bradley, an assistant of the Complainant at the West Hartford Probate Court, which was also copied to the Respondent's brother and. to Dr. Julian Parsons, a local physician. The Complainant filed this grievance on the basis that he found the September 8, 2000 letter to be abusive and insulting, in that it made several slurs against the Complainant's character and against the West Hartford Probate Court in general. The September 8, 2000 letter is excerpted at length as follows:

However, these obligations in no way run to the personal whims and fancies of an elected town politician, in a lame duck term he cannot even complete, who has clearly prostituted the integrity of his office and is presently running it as a financial spoils system for the cronies he calls his "professional conservators" in brazen violation of Section B of Canon 2 of the Code of Probate Judicial Conduct.

****

Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court, ... [T]he assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine, ...

****

It is hardly surprising that Mr. Berman is now some 5 1/2 months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office, that this family has been compelled to abide.

Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the undersigned, without legal authority, of money, for his crony Mrs. Levine on January 25, 1999; resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through this endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother's and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family, granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statutes to act in her best interest.

In this regard, most telling was his opportunistic, cynical and readily transparent exploitation of my late mother, in end of life circumstances with rapidly escalating medical expenses, to fund a private Marshall Plan for the support, care and feeding of his crony Denny Fuller, court appointed dependent who conferred her with no benefit whatever and contributed absolutely nothing to her medical care but

nonetheless managed to line his pockets with more than $3600 of her funds in less than 4 months.

Because Mr. Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so next year by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand.

In his November 8,2000 answer to the grievance complaint, which was also referenced, by the grievance panel in its probable cause finding, the Respondent first disputed what he believed to be a willful misrepresentation by the Complainant, regarding whether the Respondent had been engaged in the practice of law before the probate court. The Respondent vehemently denied that such was the case, and then went on to supplement the allegations of the September 8, 2000 letter, including stating the following:

Not content merely with the abuses ~~of his own~~ elected town office referenced in my letter of September 8, 2000, Mr. Berman now seeks to subvert and pervert the grievance committee's official function to enforce and ensure standards of competence and integrity in the practice of law to his nefarious personal purpose of suppressing constitutionally protected community speech having no relationship whatsoever to the practice of law or the delivery of legal services.

****

Because such matters are issues of vital public impact and concern to my community, I shall continue to be, a relentless and vocal community advocate for the extrication of its probate court from the pocketbooks and wallets of Mr. Berman's cronies and its consequential return to the West Hartford community to which it rightfully belongs. In so doing, I shall insist that in the course of conservator appointment proceedings that Mr. Berman's office be conducted as a probate court rather than an employment agency-for spite-spewing housewives and accounting profession drop-outs frenetically seeking to loot the estates of the incapacitated elderly in the limited time afforded by end of life circumstances.

How hypocritical of Mr. Berman to conclude his letter by invoking the name of Dr. Parsons, for he is precisely the physician referenced in the next to last paragraph of page 2 of my letter. I hereby serve notice on Mr. Berman that the residents of West Hartford will not tolerate assaults on the professional reputations of their physicians or interference with the physician-patient relationship by probate court cronies such as housewives devoid of any medical training, licensing and competence whose discredited attacks are motivated by lust for conservator fees.

Because Mr. Berman and his referenced cronies comprise a continuing menace to West Hartford's substantial concentration of the elderly, I once again exercise my demand, protected by the First Amendment, that Mr. Berman submit his resignation immediately as such action is in the best interest of my community .

. The Complainant responded to the Respondent's answer regarding the. issue of whether the Respondent had been acting as an attorney by submitting a November 13, 2000 letter enclosing three Probate Court documents in

which the Respondent indicated that he was an attorney. The Respondent, in turn, replied to the November 13, 2000 letter on November 22, 2000, stating that the documents submitted by the Complainant established only that the Respondent was acting in a pro se capacity before the Probate Court.

At the April 3, 2001 hearing on this matter, the Respondent testified and submitted documents as to his dealings with the Complainant regarding his mother, Jean Notopoulos, as Ms. Notopoulos' health deteriorated in 1998 and 1999. The Respondent expressed his extreme displeasure at a number of actions taken by the Complainant during the course of the probate proceedings. When the Respondent made an application for conservatorship, supported by a report from a court-appointed attorney, Robert Farr, the Complainant permitted, over the Respondent's objection, a state social worker to appear and be heard. The social worker, whom the Respondent described as "an unshaven buffoon with his gut hanging out over his belt," objected to the Respondent's appointment as conservator. Ultimately, the Respondent was appointed as conservator of the estate, though not as conservator of the person.

The Respondent objected to the Complainant's appointment of two "professional conservators," Carolyn Levine and Denny Fuller, as agents of the Probate Court to investigate the care and assets of the Respondent's mother. The Respondent described Ms. Levine as one of the Complainant's "cronies" who lacked training and competence and who had a financial interest in being "cut into" the estate for conservator fees. The Respondent believes that if the Complainant wanted a disclosure of his mother's assets, it should have been made by the Respondent or by the court-appointed attorney. However, he believes that the disclosure that his mother had between

$400,000.00 and $500,000.00. in assets "triggered a feeding frenzy." The Respondent believed Ms. Levine's report would be outcome determinative on the issue of the appointment of a conservator, and that the Complainant "sent this woman in to sniff the catnip." The Respondent maintained in a January 21, 2000 letter to the Complainant that Ms. Levine's behavior was driven by a "lust for conservator fees" and that the West Hartford Probate Court was "clearly awash in financial conflicts of interest."

The Respondent did not await the report from Ms. Levine but rather retained counsel, because it was clear to the Respondent that the Complainant was going to "corrupt the integrity" of the conservator appointment process. The Respondent stated that at a continuation of the hearing on the appointment of a conservator, on January 19, 1999, Ms. Levine's behavior was "reprehensible and self-serving" and included personal attacks on the Respondent. The Respondent believes Ms. Levine's testimony at that hearing was refuted by the testimony of the nurse's aides he had hired for his mother's care. At that hearing, at which the Respondent was represented by counsel, the Respondent also stated that he believed that Ms. Levine had a conflict of interest due to her knowledge of, and reaction to, the assets of the Respondent's mother. However, the Respondent acknowledged that the Complainant did not, in fact, appoint Ms. Levine as a conservator. Rather, the Complainant appointed Denny Fuller. The Respondent testified that he, the Respondent, had already taken care of the statutory duties of a conservator, and that Mr. Fuller was sent in "to loot and exploit" what he could prior to his removal or the death of the Respondent's mother. The Respondent maintained that Mr. Fuller conferred no benefit upon the Respondent's mother, but rather simply "manufactured" a bill in the amount of $3,285.00 during the course of approximately nine weeks.

The Respondent further testified that at a status conference at the Probate Court on January 25, 1999, the Complainant threatened to impose a substantial cash bond on the Respondent or to order a psychiatrist to examine the Respondent's mother, in order to coerce the Respondent into paying a $350.00 bill from Ms. Levine. The Respondent maintained there was no legal authority for the payment of the bill. The Respondent likened this to criminal extortion. The Respondent also accused the Complainant of interfering with his mother's physician/client relationship with Dr. Julian Parsons, based on the recommendation of Ms. Levine that another physician conduct an evaluation of the Respondent's mother.

It is the decision of this reviewing committee, by clear and convincing evidence, that the Respondent has violated the Rules of Professional Conduct. Rule 8.2(a) prohibits a lawyer from making "a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer. . . . ." The reviewing committee rejects the Respondent's argument that the U.S. Constitution's First Amendment protections entirely abrogate the provisions of Rule 8.2(a) and provide absolute immunity to a lawyer's criticism of judges and courts. Rather, the reviewing committee holds to the line of cases that have rejected the absolute immunity concept within the context of attorney disciplinary actions. In re Disciplinary Action Against Graham, 453 N.W.2d 313 (Minn. 1990), cert. denied, sub nom Graham v. Weraz, 498 U.S. 820, 111 S.Ct. 67, 112 L.Ed.2d 41 (1990); Matter of Westfall, 808 S.W.2d 829 (Mo. banc 1991), cert. denied, 502 U.S. 1009, 112 S.Ct. 648, 116 L.Ed.2d 665 (1991); In re Howard, 912 S.W.2d 61 (Mo. banc 1995); see also, In re Evans, 801 F.2d 703 (4th Cir. 1986), cert. denied, 480 U.S.

906, 107 S.Ct. 1349, 94 LEd.2d 520 (1987); Matter of Holtzman, 577 N.E.2d 30 (Ct. App. N.Y.), cert. denied, 502 U.S. 1009, 112 S.Ct. 648, 116 L.Ed.2d 665 (1991); Kentucky Bar Association v. Heleringer, 602 S.W.2d 165 (Ky. 1980), cert. denied, 449 U.S. 1101, 101 S.Ct. 898, 66 L.Ed.2d 828 (1981). This line of caselaw has sought to balance a lawyer's free speech rights with the state's interest in maintaining public confidence in the administration of justice. See e.g., Westfall, 808 S.W.2d at 835-36; Heleringer, 602 S.W.2d at 167-68. In so doing, these cases have rejected the "subjective malice" standard used in defamation cases pursuant to New York Times v. Sullivan; 376, U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); applying instead an objective standard of what a" reasonable attorney would do in the same or similar circumstances. Graham, 453 N. W .2d at 321-*22;* Holtzman, 577 N.E.2d at 33-34. Accordingly, these cases hold that statements by a lawyer made with a reckless disregard for their truth are not protected by the First Amendment. .

In determining what constitutes "reckless disregard", this reviewing committee is guided by the decision of Judge McWeeny in the matter of Burton v. Statewide Grievance Committee, 1998 Ct. Sup. 10929, Docket No. CV97-0573377 (Memorandum of Decision, September 24, 1998), *reversed and remanded on other grounds,* 60 Conn. App. 698 (2000). Judge McWeeny reviewed many of the cases cited above and concluded that "a lawyer may not impugn the integrity of judges without a reasonable basis to do so." Memorandum of Decision, p. 15. The Judge went on to state that:

The plaintiff was not burdened with the task of disproving the grievance, but rather with offering some evidence substantiating her claims. The absence of a reasonable

factual basis for the charges demonstrates the reckless disregard for the truth. See In re Whiteside, 386 F.2d 805, 806 (2d Cir. 1967), cert. denied, 391 U.S. 920 (1968), reh. denied, 393 U.S. 898 (1968); In the Matter of Garringer, 626 N.E.2d 809, 812 (Indiana 1994), cert. denied, [513] U.S. [826], 115 S.Ct. 93, 130 LEd.2d 44 (1994).

Applying these principals, this reviewing committee concludes that the statements of the Respondent in this matter were made without a reasonable factual basis and were therefore recklessly made in violation of Rule 8.2(a) of the Rules of Professional Conduct.

The evidence presented by the Respondent established that the Respondent disagreed vehemently with the appointment of agents of the Probate Court by the Complainant, and with the actions of those agents. In the absence of rebuttal testimony, had the Respondent limited his statements to those issues, the decision in this matter might have been different. However, the Respondent went well beyond this and directly attacked, without any reasonable substantiation, the integrity of the Complainant and of the West Hartford Probate Court. The use of phrases such as "prostituted the integrity of his office," "reprehensible extortion," "Medicare fraud," and "demonstrated financial predator," are direct allegations of misconduct against the Complainant for which there was no substantiation whatsoever. The Respondent charged the West Hartford Probate Court with "rampant financial conflicts of interest," but his only support was his subjective belief that at Ms. Levine was motivated by a desire for conservator fees, and he acknowledged that Ms. Levine was not, in fact, appointed as a conservator. The Respondent attributed "venal and avaricious" motives not just to the Complainant's "cronies" but to the Complainant himself, without providing a scintilla of evidence that the

Complainant had any such interest. The Respondent's claim for "extortion" was premised on a purported threat to increase the probate bond or order a psychiatric evaluation. This reviewing committee notes that probate court powers regarding bonds and examinations are set forth in the Connecticut General Statutes at Sections 45a-139 and 45a--132a, respectively. On this issue, as with many other of the Respondent's complaints, the reviewing committee is in full agreement with the position of the Complainant, that the Respondent had a variety of legal recourses if he was dissatisfied with any of the Complainant's actions in the underlying matter. Having chosen not to contest these issues in the appropriate forums, the Respondent cannot now claim that the Complainant's actions were in violation of the law and of the Code of Probate Judicial Conduct. The reviewing committee finds, by clear and convincing evidence, that the Respondent's statements were, as charged by the Complainant, personal attacks and slurs against the Complainant and the West Hartford Probate Court, in violation of both the spirit and the letter of the Rules of Professional Conduct.

Accordingly, this reviewing committee concludes that the Respondent, in his letter of September 8, 2000, violated Rule 8.2(a). The reviewing committee further finds that the Respondent's abusive and insulting attacks upon the integrity of the Complainant and the West Hartford Probate Court constitute conduct prejudicial to the administration of justice, in violation of Rule 8.4(4), and conduct intended to disrupt a tribunal, in violation of Rule 3.5(3). In so doing, the reviewing committee rejects the Respondent's legal argument that Rule 3.5 is limited to situations in which an attorney is acting in a representative capacity. Rule 3.5 itself makes no such distinction, and regardless of whether an attorney is acting on his own behalf or on behalf of another, he has an obligation to comport himself in a

professional manner. The reviewing committee also rejects the -Respondent's argument that there could be no disruption of the court because the probate matter had concluded. The reviewing committee notes that the September 8 letter itself indicates that issues remained outstanding, and that the Respondent acknowledged that he was not aware of the discharge of the fiduciaries when he wrote his letter.

It is the decision of this reviewing committee that the Respondent be reprimanded for violating Rules 8.2(a), 8.4(4) and 3.5(3) of the Rules of Professional Conduct.

/s/Attorney Frederick W. Krug

/s/Attorney Katherine Webster O'Keefe

/s/Ms. Johanna Kimball

SUPREME COURT : STATE OF CONNECTICUT

NO. S.C. 17341

JOSEPH J. NOTOPOULOS

v.

STATEWIDE GRIEVANCE COMMITTEE

MARCH 23, 2006

ORDER

THE MOTION OF PLAINTIFF-APPELLANT, FILED FEBRUARY 22, 2006, FOR RECONSIDERATION AND RECONSIDERATION EN BANC, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED. VERTEFEUILLE, J., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THE MOTION.

.BY THE COURT,

/s/ Michele T. Angers
CHIEF CLERK

NOTICE SENT: MARCH 23, 2006
ALTER & SHERWOOD, LLC
LAW OFFICES OF KIRK D. TAVTIGIAN, JR., LLC
JOSEPH J. NOTOPOULOS, PRO SE
STATEWIDE BAR COUNSEL
HON. WILLIAM P. MURRAY
CLERK, NEW BRITAIN SUPERIOR COURT, (CV02-0515141S)
REPORTER OF JUDICIAL DECISIONS 373/050383

S.C. 17341 : SUPREME COURT

STATE OF CONNECTICUT

JOSEPH J. NOTOPOULOS

VS.

STATEWIDE GRIEVANCE COMMITTEE

FEBRUARY 22, 2006

MOTION FOR RECONSIDERATION/MOTION FOR RECONSIDERATION EN BANC

Pursuant to Practice Book § 71-5, the plaintiff-appellant in the above-captioned case moves for reconsideration or reconsideration en banc of the court's opinion delivered on February 14, 2006 at 277 Conn. 218.

I. HISTORY OF CASE. The plaintiff appealed from the judgment of the Appellate Court affirming the trial court's judgment in favor of the defendant, the statewide grievance committee. The grievance committee reprimanded the plaintiff after he wrote a vitriolic letter accusing a probate judge of, inter alia, (1) " 'extort[ing] from the [plaintiff], without legal authority. . . money for his crony Mrs. Levine on January 25, 1999, resorting to threats to impose upon the [plaintiff] a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine [the plaintiff's] mother and bill the estate', and (2) funding 'a private Marshall Plan for the support, care and feeding of his crony Denny Fuller, [the plaintiff's mother's] court appointed dependent who conferred her with no benefit whatever. . . but. . . line[d] his pockets with more than $3600 of [the plaintiff's mother's] funds in less than [four]

months.' " 277 Conn. 228. The grievance committee found by clear and convincing evidence that the plaintiff had violated rules 8.2(a) and 8.4(4) of the Rules of Professional Conduct. The plaintiff-appellant now moves for reargument, or in the alternative, reargument en banc.

II. FACTS RELIED UPON. This court reviewed the grievance committee's findings that the plaintiff violated rules 8.2(a) and 8.4(4) using the "clearly erroneous" standard; 277 Conn. 227; as did the Appellate Court; 85 Conn. App. 425, 429; and the trial court. (R. 39-40). Although this court recognized that "the court in New York Times Co. [v. Sullivan, 376 U.S. 254, 285, 84 S.Ct. 710, 11 L. Ed. 2d 686 (1964)] apparently applied a less deferential standard of review than the clearly erroneous standard to the facts found by the lower court in that case in light of the potential threat to the petitioner's first amendment rights," it did not apply such an elevated standard because the plaintiff did not discuss the case in his brief. 277 Conn. 234 n.14. This court then affirmed, based upon such deferential review, the grievance committee's finding that the plaintiff had violated the rules at issue by clear and convincing evidence, even though the plaintiff alone testified at the hearing, the probate judge did not attend, and the committee did not present any additional evidence or call any witnesses.

III. LEGAL BASIS RELIED UPON. This case involves a grievance committee reprimand of an attorney for criticizing a probate judge, who is an elected official and therefore a public figure. The plaintiff's first amendment rights are implicated, and this court therefore should have conducted an independent review of the record to determine whether the evidence presented demonstrated with "convincing clarity" that the plaintiff had violated the Rules of Professional Conduct. As this court explained in

Woodcock v. Journal Publishing Co., 230 Conn. 525, 536 (1994); in the context of reviewing a defamation action brought by a public official:

" ' [A]n appellate court has an obligation to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion on the field of free expression." *New York Times* Co. *v. Sullivan,* [376 U.S. 254, 284-286, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)].' " *Brown v. K.N.D. Corp.,* [205 Conn. 8, 11 (1987)], quoting *Bose Corp. v. Consumers Union* of *United States, Inc.,* [466 U.S. 485, 499,104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984)]; *Tavoulareas v. Piro,* 817 F.2d 762 (D.C. Cir. 1987), cert. denied, 484 U.S. 870, 108 S. Ct. 200, 98 L. Ed. 2d 151 (1987); *Holbrook v. Casazza,* 204 Conn. 336, 343, 528 A.2d 774 (1987), cert. denied, 484 U.S. 1006, 108 S. Ct. 699, 98 L. Ed. 2d 651 (1988). Because "freedom of expression occupies the highest run of the hierarchy of First Amendment values, and is entitled to special protection. . . *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 913, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982)"; (internal quotation marks omitted) *Brown v. K.N.D. Corp.,* supra, 11; "[t]he rule of independent review assigns to appellate courts in first amendment freedom of expression cases, a constitutional responsibility that cannot be delegated to the trier of fact, whether the factfinding function be performed in the particular case by a jury or by a trial judge. *Bose Corporation v. Consumers Union* of *United States, Inc.,* supra, 501." (Internal quotation marks omitted.) Id.

If this court abdicates its constitutional responsibility, and this case stands uncorrected, it will cast a shadow on all first amendment challenges to administrative agency decisions, which will henceforth be subject to only "clearly erroneous" review. Regardless of whether the issue was

distinctly raised below, this court must, in the interest of justice, rectify this plain error pursuant to Practice Book § 60-5.

Respectfully Submitted,

THE PLAINTIFF Joseph J. Notopoulos

By /s/ David F. Sherwood
David F. Sherwood
Alter and Sherwood, LLC
701 Hebron Avenue
P.O. Box 1420
Glastonbury, CT 06033-6620
Juris No. 410620
Tel. (860) 652-4020
Fax (860) 652-4022

By /s/ Kirk D. Tavtigian
Kirk D. Tavtigian
Law Offices of Kirk D. Tavtigian LLC
780 Farmington Avenue
Farmington, CT 06032
Juris No. 414077
Tel. (860) 676-2043
Fax (860) 676-2053
His Attorneys